CHAPTER IX

IMPLEMENTATION

Experience has shown that however perfect a piece of legislation may be and however laudable its objectives, the practical achievement of the results anticipated therefrom depends entirely on the effectiveness with which it is implemented. The Bombay Tenancy and Agricultural Lands Act, 1948 and the Hyderabad Tenancy and Agricultural Lands Act, 1950 are generally regarded as embodying the most advanced ideas about tenancy reforms. The results achieved by them are not however up to the expectations raised when the Acts were passed. The results of the investigation on the working of the Bombay Tenancy Act, 1948 by the Gokhale Institute of Politics and Economics, are summed as follows:

"The main facts brought out by this investigation are, firstly, the extensive resumption and changes of tenants that took place even after the enforcing of the Act showing that the protection given to the tenants could not be effective in practice; secondly, a more or less normal market in land showing that the provisions for promoting the transfer of lands into the hands of the tillers were not quite effective; and thirdly, an almost complete absence of any signs of lowering the share and cash rents or of any changes in the tenancy practices ..... The third failure, namely, the failure to regulate rent, is however the most distressing for it is entirely a failure of implementation. As we have seen, in all the districts except Thana and Kolaba, the share rents have remained un-changed. The cash rents also have shown no signs of lowering. In fact, from the evidence we have presented, it is clear that at least on occasions when tenants were changed, there have been more cases of raising than of lowering the rents. The surprising element of the situation is that even the landlords reported to us the true rents they received and that they

found no reasons to conceal the facts. Under the circumstances, many of our questions relating to the various specific provisions of the Act sounded extremely unrealistic. For all practical purposes the Act did not exist."

2. Information gathered by us in the Hyderabad area goes to show that rent not exceeding the share of produce fixed by the statute obtains only in about 35% of the cases while in the remaining cases rent is 1/2 or 1/3 as per usage. The limit of five times the assessment introduced by the Amendment of 1954 does not appear to have come into effect to any appreciable extent. Protected tenancy certificates were issued in a large number of cases. In view of the restrictions on transfers of all agricultural lands, the problem of illegal transfers has not arisen in any magnitude. Under these circumstances surrender of the lands by the tenants was generally obtained when the landlords wanted to evict the tenants. The survey conducted by the Government of Hyderabad disclosed that during the four years' period of 1951-55 displacement of tenants on a large scale took place; the number of protected tenants and area held by them decreased by 57% and 59% respectively. In the majority of cases tenants lost their lands as a result of 'voluntary surrenders'. The provision for fixation of fair rent has not generally been resorted to by tenants. Receipts are also not generally given.

3. In the Bombay area the position is more or less the same as indicated in the report of the Gokhale Institute of Politics and Economics. Fixity of tenure has been achieved in a fair measure as tenancy law has been enforced in this area for the longest period, and these provisions have become more widely known than in other areas. Though rents have been appreciably reduced from the pre-1939 level, the statutory maximum regarding the rent is adhered to

only in areas where tenants are organised. The main evasion of the tenancy law consists of the eviction of tenants on the ground of non-payment of rent. As the system of passing receipts is practically non-existent the tenant is always at a disadvantage at such proceedings.

4. The Mysore Tenancy Act has not brought about any appreciable change in the practices prevailing prior to 1952. The only perceptible effect of the Act is that the tenants have become aware that they cannot be evicted before the lapse of the specified period.

5. In Coorg and South Kanara, the tenancy law came into force very recently and there was no time for these laws to be worked even for one season.

6. In all areas the relations between landlord and tenant continue to be regulated more by custom than by law. This is partly due to ignorance of the provisions of law on the part of the tenant. There is also the other factor that the tenant is generally in a lower social position than the landlord and is afraid to assert his rights against the landlord.

7. While reviewing the progress of land reforms during the First Five Year Plan, the Planning Commission have stated that, apart from the delays in undertaking legislation for the protection of tenants and variations in the rights offered to them in different States, frequent changes in detail in the legislation which was enacted and the complex rules which followed the legislation tended to some extent to defeat the objects of land reform. They have concluded that the experience of the First Five Year Plan emphasises the importance of efficient administration of land reform and of informed and well organised public opinion in every local community. The fact that it is generally difficult for the tenants to establish their rights is also mentioned.

PROGRAMME OF IMPLEMENTATION

8. We have been asked to examine the feasibility of introducing uniform tenancy law all over the State immediately. This question has to be examined from two aspects viz.,

(1) Whether the provisions proposed by us constitute too large a stride to be accomplished in one step in some of the areas; and

(2) whether conditions prevailing in the various areas are favourable for the uniform enforcement of the law throughout the State.

So far as the first aspect is concerned, we are ~~of~~ of the opinion that there should be some finality in respect of land reforms and that by introducing these reforms in several stages in the areas where tenancy law is of comparatively recent origin, we will be hindering rather than fost ring the main objects of tenancy legislation. Reviewing the effect of land reforms on agricultural production, Shri H. D. Malaviya pointed out recently in the A.-I.C.C. Economic Review that half-hearted land reforms had resulted in a fall in production rather than increase. When once the goal is clear there should be no hesitation in reaching it within the shortest possible period. If a separate programme is to be drawn up for each area for each item considerable areas would be left in a state of uncertainty and agricultural production will be hindered. Moreover, the reforms proposed by us cannot be postponed in any area without serious consequences on the socio-economic structure. Some of the areas where legislation has been of very recent origin are the areas where the problem is most acute.

9. It has been brought to our notice that satisfactory records of tenancies exist only in Bombay area. In Hyderabad area such a record was prepared in 1950. There are no records at all of tenancies in Mysore, Coorg and Madras areas.

The question therefore arises whether all the provisions recommended by us can be effectively implemented immediately in all the areas. The main items which depend for enforcement on the record of tenancies relate to the tenant's rights of purchase and owner's right of resumption. According to our proposals the right of resumption is dependent on the size of the holding of both the tenant and the landlord. The resumable area cannot be demarcated finally until the family holding has been determined by the Land Commission for each local area. The Land Commission will require a period of about six months at least to do this work and the record of tenancies can also be got prepared during this period. We have also taken note of the fact that Government have recently issued instructions for the preparation of records of tenancies where they do not exist now. We would strongly urge upon the Government that this work should be given the utmost priority so that records may be completed by the time the family holding as determined by the Land Commission is notified. If the records are ready by the time the family holding is determined, there should be no difficulty in bringing into force, simultaneously the provisions relating to resumption and tenant's right to ownership all over the State.

We recommend that during the interim period, that is till the demarcation of the resumable and non-resumable extents in a holding, the tenant should not be allowed to make any direct surrenders to the landlords, nor landlords allowed to accept surrenders.

Though records of ownership are maintained in most areas for purposes of collecting land revenue, even the ceilings cannot become effective until the family holding is determined. In areas where entries in revenue records do not correctly indicate the actual possession of land, action may also be taken to complete the record of rights by the time the family

holding is determined.

We, therefore, feel that there should be no difficulty in introducing simultaneously all over the State each of the various provisions recommended by us. The appropriate time for introducing each provision all over the State has to be determined with reference to the progress achieved in the preliminary work. There is no need to treat any areas as special areas where some of the provisions cannot be introduced at the same time as in other areas.

10. The Second Five Year Plan has suggested that ejectment of tenants and surrenders which have taken place during the last three years should be reviewed with a view to restore the land wherever circumstances justify such a course. As pointed out earlier in this chapter, most of these ejectments have either been for alleged non-payment of rent or through surrenders. Review of all these transactions suo motu by the Revenue officers will take too much of their time which could be more usefully devoted to the effective enforcement of the new law. We are, therefore, of the opinion that there is no necessity for the revenue officers ~~xx~~ examining suo motu all ejectments and surrenders which have taken place in the past. At the same time we are for giving the displaced tenants an opportunity to get the same rights which tenants get under the new law. In Hyderabad and Bombay areas ejectments except through tenancy authorities have been prohibited and surrenders required to be registered before the revenue authorities; and no review of previous ejectments and surrenders therefore appears necessary. In Mysore, Coorg and Madras areas there was no restriction at all on surrenders up to 11.3.1957. There was no bar on ejectments also in Mysore and Coorg till that date. In Mysore tenants could be ejected on the expiry of the period of lease unless they had held the land for 12 years continuously prior to 1.4.1951. The tenancy law enforced in South Kanara in 1954 stayed ejectments.

Hence we are of the opinion that in the areas where the right of ejectment has been restricted only recently there should be provision for restoring possession to a tenant who has been ejected in anticipation of tenancy law. We, therefore, recommend that all tenants who had held land continuously for a period of six years prior to the date on which introduction of tenancy law in the area concerned was contemplated may be given an opportunity to apply within one year of the commencement of the new Act for restoration of the land. The date for computing this period of 6 years would be 1.1.1953 in respect of Mysore area, 3.3.1954 for South Kanara district and 27.9.1955 for Kollegal taluk. Tenancy Law was introduced in Coorg for the first time on 11.3.1957. As this was after the close of the cultivation season and as a tenant's position is always to be determined with reference to cultivation, 1.7.1956 may be adopted as the date so far as Coorg area is concerned.

11. One of the main reasons for the failure of the Tenancy Acts to afford complete protection to tenants is that tenants are often ejected on the ground of default. The almost total absence of the system of issuing receipts placed the tenant at a disadvantage in such proceedings. In future the penalties for non-issue of receipts should be strictly enforced. In addition, the law may lay down that ~~any~~ no claim for recovery of rent from a tenant should ~~not~~ be allowed unless it is preferred before the competent authority before the end of August next after the harvest. A tenant should be deemed to have committed default if the rent is not paid before the end of June next after the harvest. Any tenant who commits default in three consecutive years will be liable to eviction.

12. We consider that some relief has to be given to the tenants in proceedings already instituted for recovery of rent and/or eviction on ground of default and pending disposal.

In such cases eviction of the tenant should not be ordered if he deposits within the time limit fixed by the Court the arrears of rent as decided by the Court.

AGENCY FOR IMPLEMENTATION

13. The main items of work in giving effect to the Tenancy Act will comprise the following: -

1) Disposal of applications of landlords for resumption;

2) Transfer of non-resumable extent in the name of tenants in Government records;

3) Determination of ceiling and the disposal of surplus land; and

4) Determination of cases which are entitled to exemption from the provisions of the Act.

Tenancy work is attended to by the revenue authorities in this State. Even in other States tenancy cases are normally entrusted to revenue authorities. The United Nations Review on land reforms has pointed out that in countries where important new measures are introduced, enforcement has been entrusted to administrative machinery separate from the Courts and that the creation of a special administration or local organisation for this purpose is regarded in such countries as a condition of successful enforcement.

14. The landlords are unanimous in their suggestion that all matters arising under the Tenancy Act should be decided by civil courts. They also contend that the revenue officers who are generally expected to administer the Tenancy Act in addition to their normal duties cannot devote sufficient attention to this work in view of the over-increasing demands on their time. It was also mentioned that the revenue officers have not got the necessary experience and the back-ground in legal matters to decide the complicated questions arising under the tenancy law. While there is some force in this contention, we are not prepared to accept the

suggestion that the administration of tenancy law should be entrusted to civil courts. Most of the points arising under the tenancy law have to be disposed of summarily in the same manner as matters arising under the Land Revenue Code and Land Acquisition Act. Civil Courts which are governed by meticulous and ~~xxxxx~~ technical rules of procedure and evidence may not therefore be suitable as primary tribunals for handling tenancy matters. Moreover, local knowledge and experience of revenue officers is an important desideratum for the successful implementation of the Tenancy Act. We, however, feel ~~that the tenancy~~ work should not be entrusted to the revenue officers as part of their ~~xxxxx~~ normal work. There should be a separate Land Tribunal for a group of taluks or for a single taluka if the work is heavy. The Land Tribunal should consist of a single officer of the status of Assistant Commissioner/Deputy Collector. This would ensure that an officer of sufficient maturity of experience and status is posted for this work. Wherever possible revenue officers with qualifications in law may be preferred for appointment ~~as~~ Tribunals.

The Tribunal should attend to all items of original work under the Tenancy Act except those specifically recommended by us for being entrusted to the Land Commission.

15. One of the members, Shri Mallikarjunappa Gowda is of the opinion that even officers of the status of Asstt. Commissioners/ Dy. Collec ors will notpossess the necessary local knowledge and that amicable settlement of most of the disputes would be facilitated if two associates, one from a panel of landlords and one from a panel of tenants, assist the Tribunal. After having given their anxious consideration to this suggestion coming from a member who has ample experience of rural conditions, other members however feel that more complications than advantages would ensure from adoption of such a practice.

16. The Tribunal should as far as possible deal with cases

in a summary manner as laid down in the Land Revenue Code and Land Acquisition Act. There should be only one appeal. There should be a full-time Appellate Authority for each district or group of districts and it should consist of an officer drawn from the cadre of District Judges.

17. There will be more than one appellate authority in the State. As no further appeals are provided for, there must be some device for ensuring that the decisions given by the several appellate authorities conform to uniform principles. With this in view we recommend that where any question of law is involved and the appellate authority considers that existing decisions on that subject are not uniform it may make a reference to the High Court.

18. The next question is whether legal practitioners should be allowed to appear in tenancy courts. The Bar Associations have suggested that there should be no bar on pleaders appearing in tenancy cases. The ban on appearance of legal practitioners appears to be imposed having regard to the poor condition of tenants. If legal practitioners are allowed without any restriction the landlord will almost invariably engage a counsel, thereby driving the tenant also to engage a counsel. We are of the opinion that if legal practitioners are to be allowed before the Land Tribunal it should be on a specific request in writing by the tenant. In case the tenant makes such a request both the landlord and tenant will be entitled to be represented by legal practitioners. The legal practitioners may, however, appeal before the appellate authority.

19. Though all tenancy laws require landlords to pass receipts for rent, the practice is almost non-existent. One of the main grounds for urging cash rents and prohibition of produce rents is that if cash rents are fixed the tenant can remit the rent by money order and get a voucher. We have already given reasons for considering it desirable to allow produce rents for some time. Hence it becomes necessary to

to ensure that provisions are carried by the Courts in all cases. The only effective measure to enforce this would be to make non-issue of receipts a cognizable offence.

20 It is to be observed that although the previous tenancy laws prohibit transfers of land under certain circumstances, such transfers have still been taking place. The law declares such transactions as void, but does not prescribe any procedure for dealing with such cases. Recourse if at all available is through civil courts. In view of the complicated and expensive nature of the proceedings in civil courts, this remedy is rarely availed of, and transactions declared by law to be void have nevertheless continued. So far as tenancy law is concerned the Land Tribunal should have the power to take over after summary enquiry all lands involved in transactions which are void under the law. If such action is taken by the Land Tribunal in a few selected cases, transactions in contravention of the law will be discouraged.

21. The Tribunal can act only on information supplied to it. Hence officers of the revenue and settlement departments and also village officers should be required by law to report all cases of transfers of land effected in contravention of the provisions of the tenancy law. Intentional failure to report such transactions may be made punishable with fine on conviction by a court, in addition to detention of rents

LAND COMMISSION:

22 In the scheme of tenancy law proposed by us the Land Commission plays a vital role. The basic units which the Land Commission will determine are:

1) The family holding } for each class of land
2) Average produce per acre } for each local area

The extent of land which could be resumed directly dependent on the family holding, while the amount of rent payable by the tenant and the compensation for the land transferred from the landlord to the tenant will directly

[illegible] Commission.

I [illegible] will have to [illegible] it is necessary to ensure that the Commission is so constituted as to place it above all influence [illegible]. This can best be secured by having a Judge [illegible] as Chairman of the Land Commission.

The work of the Land Commission would entail combination of expert knowledge of land tenures. It will be essential to have a senior Government Officer with experience in Revenue administration and settlement, and also an officer who has specialised in agriculture. In addition it would be desirable to have non-officials in the Commission. I, therefore, recommend that the Land Commission should consist of five members including the Chairman. The senior Revenue Officer should be of the equivalent status of a Divisional Commissioner.

The Land Commission should be [illegible] Commission, to function as an independent body.

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